



Costs Decision

Site visit made on 19 February 2025

by **R J Redford MTCP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Costs application in relation to Appeal Ref: APP/L3815/W/24/3350207 140 High Street, Selsey, West Sussex PO20 0QE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Ramu Madala for a full award of costs against Chichester District Council.
 - The appeal was against the refusal of planning permission for the change of use of ground floor Class E shop premises to a hot food takeaway (Sui Generis) including installation of external ducting for the mechanical extract ventilation system.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers the Council behaved unreasonably by referring to emerging Local Plan (eLP) policy E7; failing to take account of the 'direction of travel' of current planning policy in relation to the flexibility of town centre uses; and by not honouring the advice previously given to the applicant in relation to marketing requirements.
4. Section 38 of the Planning and Compulsory Purchase Act 2004 (as amended) requires that any determination of planning (in this case the planning permission refusal) must be made in accordance with the development plan unless material considerations indicate otherwise. And as referred to within the appeal decision, in this instance the eLP does not yet form part of the development plan.
5. Nevertheless, emerging local plans are material considerations, and Paragraph 49 of the National Planning Policy Framework (the Framework) allows local planning authorities (in this instance the Council) to give weight to such plans. As the eLP is at an advanced stage of preparation, no unresolved issues with Policy E7 within the assessment of the eLP have been brought to my attention, and that the policy aligns with the Framework which, amongst other things, seeks to ensure the vitality of town centres. I find the Council have not behaved unreasonably by refereeing and giving weight to the eLP Policy E7.

6. In terms of the flexibility of town centre uses, it is appreciated that changes¹ to the Town and Country Planning (Use Classes) Order 1987 (as amended) (Use Classes Order) has combined a series of previously separate uses into the singular use class E.
7. However, it is also appreciated that within those changes hot-food takeaways were redesignated as suis-generis thus limiting previous permitted change of use flexibility. This was a purposeful decision and accordingly the 'direction of travel' would appear to tighten the opportunities to convert buildings to hot-food takeaways, and not only introduce flexibility in town centre uses. Notwithstanding this, it is down to planning judgement as to how much weight such matters should receive. Therefore, in basing its decision on the development plan and giving limited weight to the changes in the Use Class Order, the Council has not behaved unreasonably.
8. It is unfortunate that different planning officers have given differing advice in relation to whether marketing was required. However, both pre-application and informal advice provided by a planning officer constitutes that officer's individual professional opinion, and the Council is not bound to accept their recommendations or opinions when coming to a decision. Nevertheless, it is noted that both in the pre-application advice and within the planning permission assessment period the appellant was made aware that marketing would be required. Equally, from reviewing the relevant development plan policies² and the requirement to make a decision in accordance with the development plan, it is clear marketing would have been required.
9. Therefore, although unfortunate, without evidence of any marketing having been done and with no compelling reasoning beyond the previous advice given for it not being necessary, I find it reasonable for the Council to refuse the proposal in line with the development plan.
10. Consequently, and for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

RJ Redford

INSPECTOR

¹ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

² Policy 29 of the Chichester Local Plan Key Policies and Policy 010 of the Selsey Neighbourhood Plan 2014-2029.